IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

MACA.No. 734 of 2004

OP.178/1997 of MACT ALAPPUZHA

APPELLANT/3RD RESPONDENT:

NATIONAL INSURANCE COMPANY LTD.,
REPRESENTED BY THE DIVISIONAL MANAGER,
DIVISIONAL OFFICE, KOLLAM.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: CLAIMANTS:
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1. NIRANJANA AMBADI, D/O. LATE B. AMBADI
(MINOR) ERUMAKATTU KOTTARATHIL, PLAPUZHA
HARIPAD, REPRESENTED BY NEXT FRIEND AND
GUARDIAN THE PATERNAL GRANT MOTHER, MEENAKSHI
AMMA THE SECOND RESPONDENT.

2. MEENAKSHI AMMA, W/O. LATE BHASKARAN
PILLAI, RESIDING AT ERUMAKATTU,
KOTTARATHIL, PLAPUZHA, HARIPAD.

3. P. KUMARAN, VAAZHASSERIL HOUSE,
THYCATTUSSERY POST, CHERTHALA.

4. K.M. MOHANDAS, KURAVAN PARAMBU,
CHENNAMPALLIPURAM, CHERTHALA.

5. SRI. P.N. JANARDHANAN PILLAI, S/O. NARAYANA PILLAI,
SANTHI NIKETH, VETTIYAR MURI, VETTIYAR VILLAGE.

ADDL. 5TH RESPONDENT IS IMPLEADED AS PER ORDER DATED
28-9-2004 ON I.A.NO. 2907/2004.

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.KMV.PANDALAI

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON ½/2007, THE COURT, ON 07/02/2007, PASSED THE FOLLOWING:

M. Ramachandran & S. Siri Jagan, JJ.

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M.A.C.A. No. 734 of 2004

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Dated this, the 7th February, 2007.

J U D G M E N T

Siri Jagan, J.

An Insurance Company, which has been permitted by the Motor Accidents Claims Tribunal to contest the claim for compensation by the legal heirs of the victim who died in a motor accident, under Section 170 of the Motor Vehicles Act, 1988, on the grounds available to the owner and driver of the offending vehicle, since the owner and driver failed to contest the claim, has filed this appeal challenging the quantum of compensation awarded by the M.A.C.T., Alappuzha in O.P. (MV) No. 178/1997. The O.P was filed by a minor aged 5 years, named, Niranjana Ambadi and her grand-mother Meenakshi Amma for compensation for the death of one Ambadi, father of Niranjana Ambadi and the son of Meenakshi Amma in an accident caused by a motor vehicle owned by the 3rd respondent and driven by the 4th respondent. The said Niranjana Ambadi and Meeakshi Amma are respondents 1 and 2 in this appeal.

2. The said Ambadi, while riding a motor cycle along with his wife Manju as the pillion driver, met with an accident involving a Tempo Trax which was driven by the 4th respondent and owned by the 3rd respondent herein. That Tempo Trax was insured with the appellant-National Insurance Company. The accident occurred on 5-8-1996 at 8.15 p.m. The said Ambadi died on the way to the hospital on the same day and his wife Manju, mother of Niranjana Ambadi died on 2-9-1996 after fighting for her life for almost a month. The O.P (MV) was filed by Niranjana Ambadi and Meenakshi Amma for compensation for the death of Ambadi, both of them being dependents of the said deceased Ambadi, the award in which is under challenge in this appeal, at the instance of the Insurance Company.

3. The Tribunal found that the accident occurred on account of

the rash and negligent driving of the 2nd respondent and therefore respondents 1 and 2 were jointly and severally liable for paying compensation to the claimants for the death of the said Ambadi on account of the negligence of the 2nd respondent. The Tribunal awarded a total compensation of Rs. 12,40,000/- to respondents 1 and 2, who were the claimants in the O.P and directed the appellant-Insurance Company to pay the same as the insurer of the vehicle. In this appeal, the appellant-Insurance Company is challenging the quantum so awarded by the Tribunal.

4. The main contention of the appellant is against the computation by the Tribunal of the loss of dependency of the claimants on account of the death of the said Ambadi. Ambadi was employed as a lecturer in the S.B. College, Changanacherry at the time of his death. In the claim petition, the claimants claimed that the said Ambadi was drawing a monthly income of Rs. 5,805/-. However, in the course of the proceedings before the MACT, the claimants put up a case that in 1998, with retrospective effect from 1-1-1996, U.G.C scale was introduced for the lecturers in the colleges in Kerala, as a result of which w.e.f. 1-1-1996 the pay scale of lecturers in the colleges in Kerala was revised to Rs. 10000-325-15200. The Tribunal, on the basis of the evidence of PW2, who was a lecturer similarly situated like Ambadi, came to the conclusion that the deceased would have drawn an amount of Rs. 15,000/- p.m at the time of his death. Thereafter, while computing the dependency of the claimants, the Tribunal fixed the annual income of the said Ambadi as Rs. 1,20,000/- p.a and deducting 1/3rd therefrom for personal expenses of the deceased, fixed the annual dependency as Rs. 80,000/-. Since the deceased was aged 35 years at the time of his death, 15 was taken as

the multiplier and the total loss of dependency was assessed at Rs. 12 lakhs. An amount of Rs. 15,000/- was awarded to the minor daughter of Ambadi for the loss of love, affection and guidance of her father and for the loss of love and affection to the 2nd petitioner-mother of Ambadi on account of the death of her son, an amount of Rs. 5,000/- was awarded. Another amount of Rs. 5,000/- was awarded towards pain and suffering, Rs. 3,000/- as funeral expenses and Rs. 2,000/- as expenses incurred for transportation. Rs. 10,000/- was also awarded towards loss of estate, thus making a total of Rs. 12,40,000/-. The appellant--Insurance Company is challenging this computation of compensation as exorbitant and against the principles laid down by various decisions of the Supreme Court in the matter of assessment of compensation in motor accident claims.

5. Firstly, the appellant contends that when the claimants themselves stated the monthly income of the deceased Ambadi as Rs. 5,805/- in their claim petition, the Tribunal could not have legally fixed any amount higher than that as the monthly income of the deceased.

6. The second contention is that when there were four members in the family including the deceased Ambadi and his wife Manju, both of whom were no more, the compensation should have been taken only after excluding the proportionate dependency in respect of the deceased wife also in addition to deduction of 1/3rd for personal expenses of the deceased. That being so, the Tribunal could have legally taken into account only half of the income computed and not 2/3rd of the income as done in this case, contends the appellant.

7. On the other hand, counsel for respondents 1 and 2 would contend that what the Tribunal has to do while computing

compensation in a motor accident claim is to award a just compensation. In arriving at that just compensation, the Tribunal cannot be bogged down by any claims in the claim petition itself, if it is otherwise satisfied that the just compensation is more than what has been claimed in the claim petition. Counsel would therefore contend that the contention of the appellant-Insurance Company that simply because the claimants mentioned the monthly income of the deceased as Rs. 5,805/-, there is nothing wrong in the Tribunal adopting a higher amount as the monthly income of the deceased when it is proved by materials before it that in fact, as on the date of death of the deceased, his monthly income was in effect a higher amount. He would submit that in view of the retrospective implementation of the UGC scheme with effect from 1-1-1996, which date was seven months prior to the death of Ambadi, there is absolutely nothing wrong in the Tribunal fixing the monthly salary of Sri. Ambadi as per the UGC scale. With regard to the contention of the appellant-Insurance Company that only ½ of the income could have been fixed as the dependency of the claimants, counsel points out that at the time of death of Ambadi on 5-8-1996, his wife Manju, was still alive and she died almost a month later on 2-9-1996. Since the Tribunal is to compute the loss of dependency as on the date of the deceased, the compensation could have been computed taking into account the dependency of the wife also, whose share would devolve by succession on the 1st the petitioner, daughter of the deceased couple, on the death of her mother. Counsel would further point out that after fixing the monthly income of the deceased at the time of his death as Rs. 15,000/-, the annual income was taken as Rs. 1,20,000/- only which comes to only Rs. 10,000/- per month and from

that, another 1/3rd has been deducted for personal expenses of the deceased and therefore even going by the contentions of the appellant itself, there was no violation of the principles applicable for computation of loss of dependency in motor accident claims.

8. We have considered the rival contentions in detail.

9. The question as to whether the Tribunal is competent to award compensation exceeding the amount claimed in the claim petition has been the subject matter of a decision of the Supreme Court in Nagappa v. Gurudayal Singh, [2003 (1) KLT 115 (SC)]. In that case, after recapitulating earlier decisions of the Supreme Court, the Supreme Court came to the following conclusion:

> "21. For the reasons discussed above, in our view, under the M.V. Act, there is no restriction that tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the tribunal/court is to award 'just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time barred or it cannot be contended that by enhancing the claim there would be change of cause of action. It is also to be stated that as provided under sub-s. (4) S.166, even report submitted to the claims tribunal under sub-s. (6) of S.158 can be treated as an application for compensation under the M.V. Act. If required, in appropriate cases, court may permit amendment to the claim petition."

In the wake of the above decision, we do not find any merit in the contention of the appellant-Insurance Company that the Tribunal could not have taken any amount other than the amount of Rs. 5,805/- mentioned in the claim petition as the monthly income of the deceased Ambadi for the purpose of computing the just compensation payable in the case.

10. Now, we shall proceed with the contention regarding fixation of the monthly income of Sri. Ambadi. As we have already

mentioned, Ambadi died on 5-8-1996. On the basis of his monthly income as on that date, the claimants stated his monthly salary as Rs. 5,805/- in the claim petition. Now, it is common knowledge, which can be taken judicial note of, that in 1998, the UGC scale was introduced to the teaching staff in the colleges in Kerala with retrospective effect from 1-1-1996. That being so, had Ambadi been alive in 1998, his salary in the UGC scale would have been fixed with effect from 1-1-1996. Therefore, there is absolutely nothing wrong in the Tribunal fixing the monthly salary of deceased Ambadi on the basis of the UGC scale. We find that the Tribunal had come to the finding that as on the date of the death of deceased Ambadi, he would have drawn an amount of Rs. 15,000/- as monthly salary on the basis of the evidence of PW2, who was a lecturer who entered service along with deceased Ambadi and who was identically situated like deceased Ambadi. That being so, the computation of the monthly income of the deceased Ambadi as Rs. 15,000/- at the time of his death cannot be faulted at all.

11. Despite having found the monthly income of the deceased as Rs. 15,000/- at the time of his death, the Tribunal, for the purpose of computation of dependency took the annual income of the deceased only as Rs. 1,20,000/- i.e at the rate of Rs. 10,000/- p.m. although the reason mentioned is not the one claimed by the appellant, namely, the wife had also died the dependency of the claimants would have been half. Whatever be the reason mentioned, 1/3rd of the actual salary of the deceased accepted by the Tribunal has been reduced for the purpose of computation of the dependency. Even from that amount, a further 1/3 has again been reduced and the dependency was fixed only as Rs. 80,000/- per year. Thus, as against the actual

annual income of the deceased viz. 1,80,000/-, only Rs. 80,000/- has been taken as the dependency which is only 4/9 of the actual income of the deceased. As we have already mentioned, the deceased was admittedly aged 35 at the time of his death. For a person aged 35 years as per the structured formula in the Second Schedule to the Motor Vehicles Act, the multiplier to be adopted is 17. But the Tribunal had adopted only the multiplier of 15. Thus, even adopting the principles as stated by the appellant, the dependency computed is less than what is actually due to respondents 1 and 2. In the above circumstances, we cannot accept the contention of the appellant that the compensation awarded by the Tribunal is excessive.

12. Of course, counsel for the appellant would rely on a Supreme Court decision of Managing Director, TNSTC Ltd., v. K.I. Bindu and others, [(2005) 8 SCC 473] in support of his contention that only pecuniary loss of the claimants alone can be considered for the purpose of computation of the loss of dependency. For the reasons stated by us as above, we are more than satisfied that the compensation computed by the Tribunal satisfies the principles laid down by the Supreme Court decisions fully in so far as out of a total monthly income of Rs. 15,000/- of the deceased at the time of his death, which comes to Rs. 1,80,000/- annually, the dependency has been fixed only as Rs. 80,000/- which is much less than half of the annual income of the deceased. As we have already mentioned, at the time of the death of Ambadi, his wife, namely the mother of the 1st claimant, was actually alive and therefore her share of the dependency would also have devolved on the daughter-1st claimant in the claim petition. As such, we are of opinion that the Tribunal took into account less than the actual dependency computable as

compensation to the claimants in the claim petition and therefore we do not find it necessary to interfere with the computation of the compensation payable to the claimants by the Tribunal.

In the above view, we do not find any merit in the contentions of the appellant-Insurance Company and accordingly, the appeal is dismissed. However, we do not make any order as to costs.

Sd/- M. Ramachandran, Judge.

Sd/- S. Siri Jagan, Judge.

Tds/

[True copy]

P.S to Judge.